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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DOROTHY E. MAKO and ROBERT
MAKO, SR., h/w**

Plaintiffs

CIVIL ACTION NO. 02-CV-2756

v.

**ELIJAH MUTURI GLADYS
and
M.S. CARRIERS, INC.**

Defendants

**PLAINTIFFS' MOTION FOR SANCTIONS AND TO COMPEL DEFENDANT, ELIJAH
MUTURI GLADYS, TO BE PRODUCED FOR DISCOVERY AND TO PROVIDE FULL AND
COMPLETE ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

1. On June 27, 2002, Plaintiffs served Interrogatories and Request for Production of Documents upon Defendant, Elijah Muturi Gladys.

2. Defendant's answers to Plaintiffs' discovery requests were due on August 2, 2002. Fed.R.Civ.P. 33(b)(3), 34(b).

3. On August 8, 2002, Plaintiffs filed a Motion to Compel full and complete answers to their discovery requests and to produce all documents responsive thereto against Defendant.

4. On August 26, 2002, this Honorable Court entered an Order stating that Defendant shall provide full and complete answers to Plaintiffs' Interrogatories and Request for Production of Documents

within ten (20) days from the date of the Order or suffer appropriate sanctions. See August 26, 2002 Order attached hereto as Exhibit "A". Therefore, Defendant's answers to Plaintiffs' written discovery requests were due on September 16, 2002.

5. On August 26, 2002, this Honorable Court entered an Order stating that Defendant shall appear for oral deposition within ten (20) days from the date of the Order or suffer appropriate sanctions. See August 26, 2002 Order attached hereto as Exhibit "B". Defendant has refused to appear for his deposition in the time prescribed by the Court.

6. To date, Plaintiffs have received neither answers nor objections to their written discovery requests.

7. On September 13, 2002, defense counsel sent Plaintiffs' counsel a correspondence indicating that Defendant, Elijah Muturi Gladys, has left the United States and is now residing in Africa. See September 13, 2002 Correspondence attached hereto as Exhibit "C". However, defense counsel did not include any form of written proof that Defendant has left the country and is currently living in Africa. Based on this unsupported fact, defense counsel has advised Plaintiffs' counsel that no responses to the Plaintiffs' Interrogatories will be sent and Defendant will not be produced for deposition.

8. The discovery deadline in this matter is September 23, 2002..

9. Plaintiffs will be severely prejudiced if Defendant is not produced for deposition in a timely manner. Even if Defendant is no longer living in this country, defense counsel can make him available via videoconference and obtain discovery answers from him.

10. Plaintiffs will be severely prejudiced if they do not receive Defendant's answers to their written discovery requests in a timely manner.

11. Due to Defendant's refusal to comply with this Court's August 26, 2002 Orders, Defendant should be precluded from making any defenses to Plaintiffs' claims regarding liability. Fed.R.Civ.P. 37(b)(2).

12. Due to Defendant's refusal to comply with this Court's August 26, 2002 Orders, Plaintiffs are entitled to reasonable expenses, including attorney's fees, from the Defendant. Fed.R.Civ.P. 37(b)(2). Therefore, Plaintiffs request that Defendant pay \$500.00 in attorney's fees to Plaintiffs' counsel.

13. Plaintiffs request this Honorable Court to enter an Order precluding Defendant from making any defenses to Plaintiffs' claims regarding liability; imposing \$500.00 in sanctions against Defendant, Elijah Muturi Gladys; and compelling Defendant to be produced for deposition and to provide full and complete answers to Plaintiffs' discovery requests and all documents responsive thereto from Defendant within five (5) days from the date of said Order.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter an Order precluding Defendant from making any defenses to Plaintiffs' claims regarding liability; imposing \$500.00 in sanctions against Defendant, Elijah Muturi Gladys; and compelling Defendant be produced for deposition and shall provide full and complete answers to Plaintiffs' discovery requests and all documents responsive thereto from Defendant within five (5) days from the date of said Order.

Respectfully submitted,

LAW OFFICES OF FRANCIS J. CURRAN, JR.

Dated: _____

BY: _____

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